

Cite as 2009 Ark. App. 838

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA09-489

TERRI ANN EUBANKS LEE,  
APPELLANT

V.

CHRISTOPHER DALE EUBANKS,  
APPELLEE**Opinion Delivered** 9 DECEMBER 2009APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT,  
[NO. DR2006-598]THE HONORABLE CHARLES E.  
CLAWSON JR., JUDGE

AFFIRMED

**D.P. MARSHALL JR., Judge**

Terri Lee and Christopher Eubanks married in 1992, had a child, and divorced in 2006. In their divorce decree, they agreed to share joint custody of their son and to deviate from the chart amount of child support. Eubanks had to pay \$50.00 per week into a fund primarily for the child's eventual college expenses. He also agreed to pay for the child's extracurricular activities, medical expenses, and health and dental insurance.

In May 2007, Lee relocated with the child from the Conway area to Alexander, about an hour's drive away. Lee then moved to change custody and to alter child support. Eubanks responded by petitioning to change custody to him. In April 2008,

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the circuit court denied Eubanks's petition and Lee's motion. The court, however, did alter the parties' visitation schedule: the child would reside with Lee, and Eubanks would have visitation every other weekend and Sunday afternoons on the off weekends. Neither Lee nor Eubanks appealed. The next month, May 2008, Lee sought to increase child support and alter visitation. Lee appeals from the circuit court's denial of this last motion.

**Child Support.** "Our law puts the burden on a party seeking modification of a child-support obligation to show a material change of circumstances sufficient to warrant the modification." *Bagley v. Williamson*, 101 Ark. App. 1, 4, 269 S.W.3d 837, 839–40 (2007). Factors the court should consider include "remarriage of the parties, a minor's reaching majority, change in the income and financial conditions of the parties, relocation, change in custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and the child-support chart." *McGee v. McGee*, 100 Ark. App. 1, 7, 262 S.W.3d 622, 627 (2007). We review the circuit court's decision about whether there was a material change in circumstances for clear error. *Ibid.*

The circuit court found that the only change in circumstances here was Lee's move. It concluded that this change was not material. This finding was not clearly erroneous on the disputed facts presented. Lee moved about an hour's drive away.

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And Eubanks still enjoyed visitation for at least part of every weekend.

Lee argued another material change: that Eubanks's salary had increased when he accepted a manager's job at work. She presses that his increased salary was a material change. The circuit court denied her motion without mentioning this argument. We see no clear error in the court's implicit rejection of it because the facts here were disputed.

In his September 2008 affidavit of financial means, Eubanks reported that he made \$822.00 a week gross. At the December 2008 hearing, Lee proffered a letter from Eubanks's employer saying that Eubanks had recently taken a managerial job and now made \$48,000.00 a year. But Eubanks testified that his income had actually decreased since he became a manager because he was no longer eligible for overtime. Eubanks said that he had made around \$51,000.00 the year before as an hourly employee. The record would thus support the conclusion that his income had actually decreased by \$3,000.00–\$4,000.00.

It was up to the circuit court to resolve this conflicting evidence. *Inmon v. Heinley*, 94 Ark. App. 40, 42–43, 224 S.W.3d 572, 573–74 (2006). And the circuit court did not clearly err by not finding a material change based on the alleged increase in Eubanks's income.

**Visitation.** As the moving party, Lee had to first show a material change in

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circumstances justifying a change in visitation. *Hass v. Hass*, 80 Ark. App. 408, 410–11, 97 S.W.3d 424, 426 (2003). The child’s best interest guides the circuit court’s decision on visitation. *Ibid.*

The parties’ divorce decree provided that the child would reside with each of them equally. But after Lee moved to Alexander, the circuit court established every-other-weekend visitation for Eubanks and ordered that the child spend his off-weekend Sundays with Eubanks too. Lee took exception to the new arrangement. She pointed out that the child was never able to spend an entire weekend with her and her new family in Alexander. Lee also offered testimony from the child’s therapist, who opined that the visitation schedule was having a negative effect on the child. The therapist also discussed the child’s other challenges, such as a nervous stomach and ADHD. Eubanks testified, however, that though his son was sometimes upset when he came to visit, he got over it quickly and told his father “how much he loves being with us.” Eubanks also said that he did not believe that the therapist was being fair and was influenced more by Lee than the child.

Here again, the circuit court had to assess the witnesses’ credibility, weigh the evidence, and resolve the conflicting testimony. *Inmon, supra*. In denying any visitation change, the court found that the source of the child’s difficulties was not the one-hour commute to visit his father every weekend. We see no clear error in the

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court's finding.

Affirmed.

GRUBER and HENRY, JJ., agree.